IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 198

MICHIGAN-WISCONSIN PIPE LINE COMPANY,
Appellant,

v.

ROBERT S. CALVERT, COMPTROLLER
OF PUBLIC ACCOUNTS, ET AL.,
Appellees.

No. 200

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

v.

ROBERT S. CALVERT, COMPTROLLER
OF PUBLIC ACCOUNTS, ET AL.,
Appellees.

MOTION FOR REHEARING

JOHN BEN SHEPPERD
Attorney General of Texas

W. V. GEPPERT
Assistant Attorney General

WILLIAM W. GUILD
Assistant Attorney General

Counsels for Petitioners.

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MOTION FOR REHEARING

Robert S. Calvert, Comptroller of Public Accounts, Jesse James, Treasurer, and John Ben Shepperd, Attorney General, officials representing the State of Texas, the above named appellees, present this petition for rehearing, and, in support thereof, respectfully represent:

The opinion sets out the issue before the Court as follows:

> ". . . the sole question is whether such local activities are so closely related to and such an integral part of the interstate business of [appellants] who transport gas in interstate commerce as to be within the scope of the Commerce Clause of the Constitution."

The issues of discrimination and multiple burden do not exist in this case, as was admitted by counsels for appellants in their oral argument. Further, under the stringent pleading practices of the consent statute and the appellate history of this case, these issues *are not before this Court.*

The incidence of the tax is the "taking" of the gas, but the statute qualifies this incidence to mean *first* taking of gas *produced in Texas.* The State does not tax mere taking analogous to an *un*qualified taking of goods by commercial transporters. The State does not *avoid* a tax upon the sale of gas or avoid the "substantial economic factor" such as "the interference of title passing." The *qualified* term "taking" in the gas gathering tax is *in lieu* of the "sale-purchase" transaction.

In the case at bar, as is true of the entire gas industry operating in Texas, every "taking", *subject to the tax,* was and is and must be accompanied by a sale to and purchase by the pipelines of the gas taken.

The court in its opinion recognizes that an "interference of title passing" is a sufficient factor to

segregate the local activity from the flow of commerce. A sale and purchase of gas has this factor, and the taking taxed is a constituent element of a sale and purchase transaction. If the whole transaction is recognized by this honorable court to be a "local activity", each lesser constituent part of the transaction must also be a "local activity."

Conclusion

The first taking of gas produced in Texas, taxed under Texas Laws, 1951, c. 402, Sec. XXIII, in all instances reflects a sales and purchase of the gas. That the Legislature could have used more palatable terms should not discredit the taxing incidence; and petitioners for rehearing represent that the activity is of such a local nature as to be amenable to a State tax, while so peculiar to the operation in Texas as not to occur in any other State.

Rehearing should be granted to give effect to these facts.

Respectfully submitted,

JOHN BEN SHEPPERD
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WILLIAM W. GUILD
Assistant Attorney General

Counsels for Petitioners.

Certificate of Counsel

I, *William W. Guild*, counsel for the above named petitioners, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

William W. Guild

Counsel for Petitioners.